App. F. IX-4

Previous References Law 53-30, 1-2 1930-31 Law

File No. 53-30

Serial Nos. 3-4

Later References

10

General and Revenue Secretariat.

Serial Nos. 2

Part B for April 1930

SUBJECT.

Prohi. in Ch. Pt. 1930-31 on the file of Ch. Pt. (Earthen C.M. Ganachari) allowing to appeal by Govt.

By Govt 15.4.31.

4067

App. F. III—2]

General and Revenue Secretariat

File No. 53 of 1930.

Serial No.	
3	Letter no 519 dated 16th Feb'y 1931 from the Govt. Advocate informing that Judgment was pronounced in Cr. Ap. 17 of 30-31 on the file of the H. Ct. Mysore (Govt vs C.M. Gandachar), allowing the appeal by Govt. This is an appeal against the order of acquittal in C.C. No 1647 of 29-30 on the file of the Bench Magrs Court Bangalore (Govt vs Mr. C.M. Gandachar) in which the Municipality had filed a case against Mr. C. M. Gandachar for not paying taxes on 10 Motor lorries and 2 pleasure Cars. After institution of the Case he paid taxes on 9 lorries and 1 pleasure Car leaving one of one lorry and one pleasure Car unpaid. A Copy of the Judgment allowing the appeal may be awaited. ISD 20/2 for Secretary Legal'y 20/2/1931 P.M. 26/2
4	Letter no 588 dated 19th March 1931 from the Govt. Advocate forwarding a Copy of the Judgment. The necessity for retaining Registered licence for an open lorry is kept for use in case of emergency and in extra

Sur A

ISD 20/2

Note—Contn. Sheet

WD 02328---GPB---10,000---22-4-30

Serial No.

Kept for sale
pleasure Car is Considered seperately
In the Case of Members, the learned Judge have
~~Cleared~~ following the Case in (1912) 2 K.B.
(London County Council vs Fairbank)
and have set aside the acquittal, leaving
a nominal fine of Rupee one. Since the
~~respondent~~ Offence was about a technical one & committed under a
bonafide mistake of law.
As regards the Second Count
Viz the ~~pleasure~~ Car the learned Judge have
agreed with the Contention of the
Counsel for the respondent that it is
kept only for sale and have dismissed the
appeal as to the last part of the Case.

for perusal

ISD
28/3

Legal R^r

DSP
28/3

Submitted for perusal

D.M.
4/4

3rd Member

Seen by the 3rd Member - Vide initials on the P.V.D.

2nd Member

D.M.
5/4

[illegible]
10/4/31

[illegible]
10/4/31

D.M.
10/4

OFFICE OF THE SECOND MEMBER OF COUNCIL
9 APR. 1931
No. 9-1931

DSP
4/4

Note–Comm. Sheet

G.R.S. III—3]

Routine Notes.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

1 406/31

OFFICE OF THE GOVERNMENT ADVOCATE
IN MYSORE,

In reply please refer to
No. 519

Bangalore 16th February 19 31.

Tel. Address:—
"JURIST," Bangalore.

Law S3-30-3

FROM

M. RAMACHANDRA RAO, ESQ., B.A., B.L.,
GOVERNMENT ADVOCATE IN MYSORE,
BANGALORE.

To

The Secretary to the Government of
His Highness the Maharaja of Mysore,
Law Department,
Bangalore

SIR,

With reference to Government Order No. P.2154-5/Law. 53-30-2, dated the 14th/15th October 1930, I have the honor to state that Criminal Appeal No. 17 of 1930-31 on the file of the High Court of Mysore, (Government of Mysore VERSUS. Mr. C. M. Garudachar) came on for final disposal this day, and Judgment was pronounced allowing the appeal by Government.

2. A copy of the Judgment has been applied for, and the same will be forwarded to Government as soon as

N.B.—Should routine notes be written on small slips, the notes must be copied, or slips pasted on this form.

OFFICE OF THE GOVERNMENT ADVOCATE
IN MYSORE,

In reply please refer to
No. 588

Tel. Address:
"JURIST," Bangalore

Bangalore, 18th March 1931.

From

The Government Advocate
in Mysore, Bangalore.

To

The Secretary to the Government
of H. H. the Maharaja of Mysore,
Law Department,
Bangalore.

Sir,

In continuation of this office letter No. 519, dated the 16th February 1931, I have the honor to forward herewith, for the information of Government, a copy of the Judgment passed in Criminal Appeal No. 17 of 1930-31 on the file of the High Court of Mysore, (Government of Mysore, Versus. Mr. C. M. Garudachary.

I have the honor to be,
Sir,
Your most obedient servant,

M. Ramachandra Rao
Government Advocate.

OFFICE OF THE
THIRD MEMBER OF COUNCIL.
8 APR. 1931
No. 6627

IN THE HIGH COURT OF MYSORE AT BANGALORE.

Monday, the 16th day of February 1931.

PRESENT

Rajadharmapravina

C. S. Doraswami Iyer, Chief Justice,

and

Mr. Justice G. Sreenivasa Iyer.

--

Criminal Appeal No.17 of. 1930-31.

The Government of Mysore. Complainant .. APPELLANT

(By Mr. M. Ramachandra Rao, Government Advocate).

- Vs -

Mr. C.M. Garudachar Accused .. RESPONDENT

(By Mr. K.V. Ramanujaiengar).

Criminal Appeal against the order of acquittal passed by the Bench of Magistrates (Second Class), Bangalore City, in Criminal Case No.1447 of 1929-30.

This Criminal Appeal coming for hearing on Monday the 2nd day of February 1931; the Court delivered the following:-

J U D G.M E N T.

This is an appeal by Government against the order of acquittal passed by the Bench of -

Magistrates

Magistrates, Bangalore, in Criminal Case No.1447 of 1929-30.

The respondent is the proprietor of the City Motor Bus Service, and is also a dealer in motor cars. For carrying on the business of the Bus Service, he is keeping for hire nine buses, and a tenth bus, as a standby to replace any one of the buses, which might temporarily be disabled for service. He has obtained the necessary licenses for the 9 vehicles playing for hire, and has paid also the municipal taxes due thereon. He has not taken a license for the spare bus; nor has he paid any vehicle tax to the municipality on account of this bus. The ground of exemption claimed by him is, that so far as the licensing of this spare bus was concerned, he had obtained permission from the Deputy Commissioner to keep it as a spare bus without a license for use when a contingency of the kind mentioned above arose, and that in regard to the payment of the municipal tax, he was not liable as he was not running more than 9 vehicles, at a time, and that the spare bus when in use, was only run in replacement of another unfit for use. These are the undisputed facts of the case. The question is whether in the circumstances, the exemption from liability claimed in respect of the municipal tax, by the respondent is well founded.

The relevant provisions bearing on the subject may be briefly examined:-

Section

Section 59(6) (iii) of the Municipal Regulation enables the Municipal Council to impose a tax on all - vehicles, kept for use, within the municipality.

Section 48(1)(ii) (as amended by Regulation VIII of 1915) enables the municipal council to make byelaws for the numbering and registeration of motor vehicles.

Under the bylaws framed by the municipal council in this behalf, which came into force from 1-7-29, a person who is the owner of a motor vehicle liable to taxation in the Bangalore City Municipality should register such motor vehicle within the period mentioned therein, on payment of the half-yearly or yearly tax on such motor vehicle. Any person who commits a breach of this bye-law shall, on conviction before a Magistrate, be punishable with fine which may extend to Rs.50/-.

The learned Government Advocate contended that the spare bus was, even on the admission of the respondent kept for use within the municipality; indeed it was used as and when the occasion for its use arose, and that therefore its non-registration and the non-payment of taxes due on it, rendered ~~and~~ the respondent liable, under the penal provisions of the byelaws. There can be no doubt that this bus was kept for use within the - municipality, as it is not only kept there, but also used there. A bus kept and used within the municipality is undoubtedly kept for use within the municipality. The fact that it is used occasionally and only during the period when one of the other registered vehicles is - rendered unfit for use, will not in our opinion, make

any

any difference. The bus will none the less be a bus kept for use within the municipality. In - London County Council Vs. Fairbank (1911) 2 K.B. 32 it was held that a cab proprietor who had in reserve in his yard a number of square cabs ready for use and intended to be used if and when occasion required, did not 'keep' them within the meaning of Section 27 of the Customs and Inland Revenue Act 1869. That Section runs thus:- "Every person who * * shall keep a greater number of - carriages * * than he shall be authorised to * * keep by any license or licenses, granted to him under that act shall be liable to a penalty. * * ". Lord Alverston C.J. observed that - until a carriage stands or plies for hire it was not a hackney carriage, and was not the subject of taxation as such. It was found, in that case, that the hackney carriages, in respect of which the owner was prosecuted, had ever as a fact gone out of the yard. In such circumstances, they could not be held to have been 'kept' so as to make them liable for taxation. The learned C.J. added that if any of the cabs had gone out and taken the place of another cab, the decision would have been different. In this view - both Bray and Bankes, JJ, concurred. The gist of the offence lay not in merely keeping the cabs in one's - possession, but in actually using them. It is the - actual user that renders the owner liable to the tax, under the English Act. We think that the above - principle is quite applicable to the present case. The order of acquittal is therefore wrong and must be set aside. As the respondent admits that the non-regis-

tration

non-registration was due to a bona fide belief that the provisions of the Municipal laws did not apply to a spare bus, used if and when the occasion required its user, only as a substitute for another and that he was not liable unless all the 10 busses were on the road simultaneously, we think that a nominal fine of rupee one will quite meet the ends of justice, and we order accordingly.

As regards car No.P.523 A, in respect of which no Municipal tax has been paid, the plea of the respondent is that in the course of his business as a dealer in cars, he was in the habit of taking used cars from customers in part payment of other cars sold to them, and that the car in question was one of such cars. It was alleged that the car was taken out and put on the road only for purposes of demonstration, whenever a prospective buyer required to have a test trial made, and not on other occasions. In the Schedule of taxes, and exemptions printed at page 47 etc., of the Rules and Byelaws of the Bangalore City Municipal Council, it is provided that vehicles kept by dealers solely for sale are exempted from taxation. In the present case, as the car No.P. 523 A is kept solely for sale, and the use that is occasionally made of it is incidental to its sale, we do not think that any offence has been committed under rule 1 of the rules framed under Section 48(1) (JJ) of the Municipal Regulation. In regard to this part of the case, the appeal is dismissed.

Sd/- C.S. Doraswami Iyer,
Chief Justice.

Sd/- G. Sreenivasa Iyer,
Judge.

'COPY'

Dy. Registrar.